



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Donald F. McGahn II
Jones Day
51 Louisiana Ave., NW
Washington, DC 20001

MAR 23 2016

RE: MUR 6888
Freedom Partners Action Fund, Inc. and
Thomas F. Maxwell III in his official
capacity as treasurer (the "Committee")

Dear Mr. McGahn:

On October 28, 2014, the Federal Election Commission notified your clients of a complaint alleging that the Committee violated certain sections of the Federal Election Campaign Act of 1971, as amended. On February 25, 2016, the Commission found, on the basis of the information in the complaint, that there is no reason to believe that the Committee violated 52 U.S.C. §§ 30116 or 30118 by making or receiving prohibited or excessive in-kind contributions in the form of coordinated communications. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Peter Reynolds, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter", followed by a long horizontal flourish.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis :

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Republican National Committee and
6 Anthony Parker in his official capacity as treasurer

MUR: 6888

7
8 American Crossroads and Caleb Crosby in his
9 official capacity as treasurer

10
11 Crossroads GPS

12
13 Americans for Prosperity

14
15 GOP Data Trust LLC

16
17 i360, LLC

18
19 State Party Committee Respondents:

20
21 Arizona Republican Party and Timothy Lee in his
22 official capacity as treasurer

23
24 Montana Republican State Central Committee and
25 Deborah Brown in her official capacity as treasurer

26
27 West Virginia Republican Party, Inc. and
28 Michelle Wilshire in her official capacity as treasurer

29
30 Candidate and Authorized Committee Respondents:

31
32 Andrew Walter

33
34 Andrew Walter for Congress and
35 Chris Marston in his official capacity as treasurer

36
37 Benjamin Sasse

38
39 Ben Sasse for US Senate Inc. and
40 Mark Fahleson in his official capacity as treasurer

41
42 Carl DeMaio

43
44 Carl DeMaio for Congress and
45 Paul Kilgore in his official capacity as treasurer

46

1 Robert Goodlatte

2
3 Bob Goodlatte for Congress Committee and
4 Kenneth Lorenz Prickitt in his official capacity as treasurer

5
6 Robert T. Schilling

7
8 Bobby Schilling for Congress and
9 Mitch Heckenkam in his official capacity as treasurer

10
11 Elizabeth Cheney

12
13 Cheney for Wyoming and Mark Vincent
14 in his official capacity as treasurer

15
16 Thomas Cotton

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18 Cotton for Senate and Crate Bradley in
19 his official capacity as treasurer

20
21 Doug Ose

22
23 Doug Ose for Congress and Vona Copp
24 in her official capacity as treasurer

25
26 Elise Stefanik

27
28 Elise for Congress and James Morris
29 in his official capacity as treasurer

30
31 Paul Dietzell

32
33 Friends of Dietzell and Brandon Lagarde
34 in his official capacity as treasurer

35
36 Karen Handel

37
38 Handel for Senate Inc. and Roger Santi
39 in his official capacity as treasurer

40
41 William Hurd

42
43 Hurd for Congress and Bradley Crate
44 in his official capacity as treasurer
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1 Steve Lonegan
2
3 Lonegan for Senate Inc. and Scott B. Mackenzie
4 in his official capacity as treasurer
5
6 Matt Rosendale
7
8 Matt Rosendale for Montana and Bill Vancanagan
9 in his official capacity as treasurer
10
11 Michael McFadden
12
13 McFadden for Senate and Paul Kilgore
14 in his official capacity as treasurer
15
16 Martha McSally
17
18 McSally for Congress and James Thomas III
19 in his official capacity as treasurer
20
21 Michael Turner
22
23 Mike Turner for Congress and Kyle Walton Denham
24 in his official capacity as treasurer
25
26 Robert J. Wittman
27
28 Rob Wittman for Congress and Steve Ralls
29 in his official capacity as treasurer
30
31 Matthew D. Schultz
32
33 Schultz for Iowa and David Overholtzer
34 in his official capacity as treasurer
35
36 Edward Scott Rigell
37
38 Scott Rigell for Congress and Joseph B. Wood
39 in his official capacity as treasurer
40
41 Steven Daines
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43 Steve Daines for Montana and Lorna Kuney
44 in her official capacity as treasurer
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1 Dan Sullivan

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3 Sullivan for US Senate and Eric Campbell
4 in his official capacity as treasurer

5
6 Thomas W. Reed II

7
8 Tom Reed for Congress and Marc Valerio
9 in his official capacity as treasurer

10
11 Lynn Jenkins

12
13 Lynn Jenkins for Congress and Heather Grote
14 in her official capacity as treasurer

15
16 **I. INTRODUCTION**

17 This matter was generated by a complaint filed by American Democracy Legal Fund and
18 Brad Woodhouse alleging that the Republican National Committee and Anthony Parker in his
19 official capacity as treasurer ("RNC"), American Crossroads and Caleb Crosby in his official
20 capacity as treasurer ("American Crossroads"), Crossroads GPS, Americans for Prosperity
21 ("AFP"), GOP Data Trust LLC ("Data Trust"), i360, LLC ("i360"), the State Party Committee
22 Respondents, and the Candidate and Authorized Committee Respondents violated the Federal
23 Election Campaign Act, as amended (the "Act"). Specifically, the Complaint alleges that:
24 (1) AFP, American Crossroads, and Crossroads GPS made excessive in-kind contributions to the
25 RNC, the State Party Committee Respondents, and the Candidate and Authorized Committee
26 Respondents in the form of coordinated communications; (2) Data Trust made prohibited in-kind
27 contributions to the RNC, and (3) the RNC "illegally established, financed, maintained, and/or
28 controlled" Data Trust.¹

¹ Compl. at 11-19.

1 As discussed below, none of the respondents appears to have violated the Act.
2 Accordingly, the Commission finds: (1) no reason to believe AFP, American Crossroads,
3 Crossroads GPS, the RNC, the State Party Committee Respondents, and the Candidate and
4 Authorized Committee Respondents violated 52 U.S.C. §§ 30116 or 30118 by making or
5 receiving prohibited or excessive in-kind contributions in the form of coordinated
6 communications; (2) no reason to believe Data Trust or the RNC violated 52 U.S.C. § 30118 by
7 making or receiving prohibited in-kind contributions in the form of data management services;
8 and (3) no reason to believe the RNC or Data Trust violated 52 U.S.C. § 30125 by soliciting,
9 receiving, or directing funds that were not subject to the prohibitions, limitations, and reporting
10 requirements of the Act.

11 **II. FACTS**

12 **A. Respondents**

13 The RNC is the national party committee of the Republican Party. Data Trust is a for-
14 profit “vendor to conservative and Republican organizations that participate in the political
15 process and undertake issue advocacy campaigns.”² Respondent i360 is a “for-profit company
16 that serves as a data warehouse and data resource vendor to its customers, which include
17 businesses, not-for-profit entities, political committees, candidates, and political party
18 committees.”³ American Crossroads is registered with the Commission as an independent

² Data Trust Resp. at 1. Data Trust is actually two entities. The Data Trust is a Virginia business trust which holds title to intellectual property, including (1) the data generated by its wholly-owned operating company, GOP Data Trust LLC (the “LLC”), and (2) data gained through the Data Exchange Agreement with the RNC. The Virginia business trust issues stock to private investors. The LLC has an agreement with the Virginia business trust whereby it leases the data obtained through the Data Exchange Agreement with the RNC and then exchanges, leases, and sells data to clients. Data Trust Resp. at 3; RNC Resp. at 4, n. 4.

³ See i360 Resp. at 2.

1 expenditure-only committee. Crossroads GPS and Americans for Prosperity are non-profit
2 corporations that are not registered with the Commission as political committees.

3 The Arizona Republican Party, West Virginia Republican Party, and Montana
4 Republican State Central Committee⁴ (the “State Party Committee Respondents”) are state
5 committees of the Republican Party. The 24 candidates identified in the Supplemental
6 Complaint (and the caption above) (together with their authorized committees and treasurers, the
7 “Candidate and Authorized Committee Respondents”) were candidates for Congress and the
8 Senate in 2014.⁵

9 **B. Background**

10 1. Formation of Data Trust

11 The Complaint alleges that the RNC established and continues to control Data Trust.⁶ As
12 support, the Complaint notes that Data Trust’s chairman and executive director each “have ties to
13 the Republican Party apparatus” and cites several newspaper articles discussing the RNC’s role
14 in Data Trust’s formation.⁷

15 Data Trust and the RNC state that Data Trust was formed in 2011 by “a group of
16 Republican leaders,”⁸ including former RNC Chairman Robert M. “Mike” Duncan,⁹ who

⁴ The Montana Republican State Central Committee did not file a response to the Supplemental Complaint. Given the available information, we are comfortable making collective findings for the State Party Committee Respondents.

⁵ The following respondent candidates (and their authorized committees and treasurers) did not file a response to the Supplemental Complaint: Paul Dietzell, Robert Schilling, Steve Lonegan, Martha McSally, Michael Turner, and Edward S. Rigell. Given the available information, it is appropriate to make collective findings for the Candidate and Authorized Committee Respondents.

⁶ Compl. at 18.

⁷ *Id.* at 17-18.

⁸ RNC Resp. at 4.

⁹ Data Trust Resp. at 2.

1 “recognized a need in the commercial marketplace for sophisticated data products aimed at
2 conservative and Republican organizations” and “became a for-profit commercial vendor
3 targeting this client base.”¹⁰ According to Data Trust, Duncan knew from his tenure with the
4 RNC that the RNC had large voter profiles, but that the profiles had not been adequately updated
5 with sophisticated consumer data that can be used to predict voter behavior.¹¹ Data Trust and the
6 RNC entered into the August 2011 Data Exchange and Enhancement Agreement (the “Data
7 Exchange Agreement”), under which the RNC would “license portions of its voter list and data
8 to the Trust in exchange for the Trust’s enhancing the files with its data valued at the same fair
9 market value as the license for the RNC list.”¹² Pursuant to the Data Exchange Agreement, each
10 party would continue to grow and enhance its own data and then exchange those enhancements
11 with each other a wholesale basis.¹³ Data Trust states that the Data Exchange Agreement, at its
12 expiration, requires the value of the exchanged data to be equal.¹⁴

13 According to Data Trust, it obtains base information from two sources – the Data
14 Exchange Agreement with the RNC and its own data collection efforts.¹⁵ The latter includes
15 obtaining addresses, phone numbers, email addresses, and consumer information on individuals’
16 interests, past purchases, and “thousands of other data points” from commercially available
17 databases.¹⁶ Data Trust states that it began offering data services, such as building applications

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* The Data Exchange Agreement was renewed in 2014. RNC Resp. at 5.

¹³ Data Trust Resp. at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ *Id.*; see Crossroads Resp. at 3 (citing Data Trust’s website, <http://www.gopdatatrust.com/>).

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1 to view and interact with the Data Trust's data, following the 2012 elections.¹⁷ Data Trust states
2 that its clients then select the data that will be useful to them and pay fair market rates to Data
3 Trust for access to that data.¹⁸ As part of Data Trust's standard agreement, clients are required to
4 report back to Data Trust any "data modifications" – new or corrected data gained by contacting
5 individuals based on the data provided to them by Data Trust – so that Data Trust can update its
6 file and keep its data current.¹⁹ Data Trust states that the modifications are incorporated into
7 Data Trust's file, but it does not inform clients when modifications are made, who supplied the
8 data, or who can access it.²⁰ According to Data Trust, it does not make suggestions about which
9 data fields might be useful to clients, nor does it sell political strategy or "engage in, consult on,
10 or produce any public communications."²¹

11 2. Data Trust and the Crossroads Groups

12 Crossroads GPS and American Crossroads (together, the "Crossroads Groups") are two
13 of Data Trust's clients. The Complaint alleges that Data Trust is passing "non-public strategic
14 campaign and party data" between the RNC and the Crossroads Groups, among others.²² The
15 Crossroads Groups state that their agreements with Data Trust provided them with access to raw
16 data about voters – not strategy.²³ The Crossroads Groups describe the data enhancement
17 arrangement with Data Trust as part of the consideration of the contract (along with the licensing

¹⁷ Data Trust Resp. at 4.

¹⁸ Data Trust Resp. at 6.

¹⁹ *Id.* at 7.

²⁰ *Id.*; DeStefano Aff. ¶¶ 10-11.

²¹ Data Trust Resp. at 7-8.

²² Compl. at 2.

²³ Crossroads Resp. at 3; Data Trust Resp. at 7.

1 fees) and stated that they returned the enhancements to Data Trust on a quarterly basis.²⁴
2 Regarding their use of the data, the Crossroads Groups describe paying Data Trust for access to a
3 voter file (such as a file containing information about all North Carolina voters), which Data
4 Trust would then deliver to a consultant hired by the Crossroads Groups for “microtargeting”
5 analysis.²⁵ The consultant would then deliver to the Crossroads Groups lists representing various
6 categories of voters (e.g., “male independent voters between 45-60 years old”) that the
7 Crossroads Groups could then use in targeting their communications.²⁶ According to the
8 Crossroads Groups, the internally strategic reasons for selecting a particular group of voters and
9 the substance of the communications were developed entirely independently of Data Trust or any
10 candidate or committee.²⁷ Furthermore, the Crossroads Groups state that Data Trust’s data was
11 only used to create targeted phone and mailing lists, and their television and radio advertisements
12 were developed entirely without data from Data Trust.²⁸

13 3. Data Trust and the RNC

14 The Complaint alleges that Data Trust maintains the RNC’s database and provides
15 “extensive data services” to the RNC.²⁹ The Complaint further alleges that the RNC has made
16 only a single payment of \$25,000 to Data Trust despite receiving services of far greater fair
17 market value.³⁰

²⁴ Crossroads Resp. at 5.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4-5.

²⁸ *Id.* at 7-9.

²⁹ Compl. at 2-3.

³⁰ *Id.* at 16.

1 According to Data Trust, it has never performed list management services for the RNC.³¹
2 Similarly, the RNC states that it “maintains, operates, and administers its own voter file.”³² Data
3 Trust apparently has received either \$45,000 or \$60,000 from the RNC for use of this application
4 programming interface since August 2014.³³ The RNC states that it also paid \$5,000 per month
5 to Data Trust during 2013-2014 to lease the beta version of Data Beacon, a voter relationship
6 management program Data Trust was developing.³⁴ According to the RNC, after Data Trust lost
7 interest in developing Data Beacon, the RNC bought the unfinished product for \$150,000 and
8 paid \$87,800 for engineering and consulting services to facilitate the transition.³⁵

9 4. Data Trust and i360

10 Respondent i360 describes its business as acquiring data and building predictive models
11 which anticipate (based on thousands of data points) the behaviors and preferences of an
12 individual (or group of individuals).³⁶ It sells access to its data library, data management tools,
13 and modeling and analytical tools; clients then use those tools to locate particular individuals to
14 target with their communications.³⁷ According to i360, “the database and its products are not

³¹ Data Trust Resp. at 2-3.

³² RNC Resp. at 3.

³³ *Id.* at 9 (\$45,000); RNC Resp. at 5-6 (\$60,000).

³⁴ RNC Resp. at 5.

³⁵ *Id.*

³⁶ i360 Resp. at 2-7.

³⁷ *Id.* at 6-8. Other respondents provide examples of i360’s products and services in their responses. *See, e.g.,* Resp. of Arizona Republican Party at 1 (describing how it provided data to i360, which “simply allowed Party users to access this data using their applications,” and stating that “i360 informed us that we would *not* have access to any unique data” generated by i360’s other clients); Resp. of West Virginia Republican Party at 2 (stating that it “passively received data and never sent any information back to i360 that could conceivably be used by a common vendor in a coordinated communication”); Resp. of Mike McFadden and McFadden for Senate at 2-3 (“In no way did i360, LLC perform provide [sic] any substantive or strategic guidance, beyond administrative guidance, regarding the records that MFS pulled from [i360’s] data warehouse”).

1 determinants of communications strategy or usage; they are tools for use once a communications
2 strategy is already determined.”³⁸ Like Data Trust, i360 maintains that “in no case can a
3 customer select data that that customer knows has been generated by a particular customer.”³⁹
4 Customers may upload their own data and use i360’s data management tools to manage the data;
5 in that event, the data is “siloe” in its own database and is not shared with other customers.⁴⁰ It
6 is, however, used by i360 to refine and enhance its own data and predictive models.⁴¹

7 In August 2014, Data Trust entered into a data exchange agreement with i360, which
8 expanded the amount of data available to each vendor’s clients and obligated each party to
9 provide periodic updates from their databases.⁴² The Complaint alleges that in the wake of this
10 agreement, the RNC and Data Trust “started passing party and campaign data to . . . AFP and all
11 partners of the Data Trust’s new partner i360” in a “real time exchange of non-public,
12 strategically material data”⁴³ According to Data Trust and i360, the exchanged data do not
13 contain information about which group collected the data, when they were collected, or who else
14 has accessed the data.⁴⁴

15 According to the Complaint, i360 contracted with AFP and each of the State Party
16 Committee Respondents and the Candidate and Authorized Committee Respondents, and thus

³⁸ i360 Resp. at 7.

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 9.

⁴¹ *Id.*

⁴² Data Trust Resp. at 8; i360 Resp. at 10.

⁴³ Compl. at 2.

⁴⁴ Data Trust Resp. at 8; i360 Resp. at 10, 23 (“[B]ecause any data points gleaned from the i360 data library or modeling scores have been scrubbed of source, circumstance, or any other identifying information, one customer cannot ‘reverse engineer’ the data in the library in an attempt to gain information about another customer’s activities . . .”).

those parties became part of the data exchange underlying the coordinated communications allegations.⁴⁵ Each of the State Party Committee Respondents and Candidate and Authorized Committee Respondents who filed a response with the Commission denies that a violation has occurred.⁴⁶ AFP denies that a coordinated communication occurred.⁴⁷ i360 also denies that a coordinated communication occurred.⁴⁸

III. LEGAL ANALYSIS

A. The Respondents Did Not Make Coordinated Communications

According to the Complaint, the independent expenditures made by AFP and the Crossroads Groups are coordinated communications because those groups, through their agreements with Data Trust (the Crossroads Groups) and i360 (AFP), are receiving strategic data about the plans, projects, activities, and needs of the RNC, State Party Committee Respondents, and Candidate and Authorized Committee Respondents.⁴⁹

The Act prohibits corporations from making contributions, including in-kind contributions, in connection with a federal election.⁵⁰ Correspondingly, federal candidates, their authorized committees, and political party committees may not knowingly accept a corporate contribution.⁵¹ An expenditure made by any person in cooperation, consultation, or concert,

⁴⁵ Supp. Compl. at 6-7.

⁴⁶ At least three respondents note that their campaigns ended months prior to the August 2014 data exchange agreement between Data Trust and i360 that provides the foundation of the coordination allegations. *See, e.g.*, Resp. of Elizabeth Cheney and Cheney for Wyoming at 1; Resp. of Karen Handel and Handel for Senate, Inc., at 2; Resp. of Matt Schultz and Schultz for Iowa at 3, 5.

⁴⁷ AFP Resp. at 3-7.

⁴⁸ i360 Resp. at 12-24.

⁴⁹ Compl. at 2-3.

⁵⁰ 52 U.S.C. § 30118(a).

⁵¹ *Id.*

1 with, or at the request or suggestion of, a candidate, authorized political committee, or a national
2 or state party committee constitutes an in-kind contribution.⁵² These are called “coordinated”
3 expenditures.⁵³ Under Commission regulations, an expenditure for a communication is
4 coordinated when the communication is (1) paid for, in whole or part, by a person other than the
5 candidate, committee, or party; (2) satisfies at least one of the content standards described in 11
6 C.F.R. § 109.21(c); and (3) satisfies at least one of the conduct standards described in 11 C.F.R.
7 § 109.21(d).⁵⁴

8 The Complaint generally alleges that the payment and content standards are satisfied by
9 all of the independent expenditures made by the Crossroads Groups since 2011,⁵⁵ and by the
10 “millions of dollars on ‘independent expenditures’” spent by AFP since its agreement with
11 i360.⁵⁶ All such communications satisfy the payment standard because the independent
12 expenditures referred to by the Complaint were paid for by a person other than the candidates,
13 committees, or parties with whom they allegedly coordinated.⁵⁷ Given that they were reported as
14 independent expenditures, such communications presumably also satisfy the content standard as
15 public communications that expressly advocate the election or defeat of a clearly identified
16 candidate for federal office.⁵⁸

⁵² *Id.* § 30116(a)(7)(B)(i), (ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

⁵³ 11 C.F.R. § 109.20.

⁵⁴ *Id.* § 109.21(a)(1)–(3).

⁵⁵ Compl. at 12, Exs. D and E.

⁵⁶ *Id.* at 12. The Commission’s records reflect that AFP spent \$5,926,538 on independent expenditures between October 1, 2014, and December 31, 2014. *See* 2014 Year-End Report of Americans for Prosperity at 1.

⁵⁷ 11 C.F.R. § 109.21(a)(1).

⁵⁸ *Id.* § 109.21(c)(3).

1 The Complaint alleges that the conduct standard is satisfied because Data Trust and i360
2 served as a “common vendor” between the groups making the communications (AFP and the
3 Crossroads Groups) and the RNC, State Party Committee Respondents and Candidate and
4 Authorized Committee Respondents.⁵⁹ The “common vendor” standard is satisfied if all of the
5 following are true: (i) the person paying for the communication employs a commercial vendor⁶⁰
6 to “create, produce, or distribute” the communication; (ii) the vendor has provided certain
7 delineated services to the recipient of the contribution during the 120 days preceding the
8 communication; and (iii) the vendor conveys non-public information about the campaign’s
9 “plans, projects, activities, or needs,” or services previously provided to the campaign by the
10 vendor, and that information is material to the creation, production, or distribution of the
11 communication.⁶¹

12 In this case, the “common vendor” standard is not satisfied because it appears that Data
13 Trust and i360 sell access to their data libraries and analytical tools (and administrative services
14 relating to such access) and are not involved in creating, producing, or distributing
15 communications in any way. Access to the data is evidently tailored according to parameters the
16 client selects, and the client may then use the pre-selected data set in a way it deems appropriate
17 for carrying out its own strategic aims. The available information does not indicate that Data
18 Trust and i360 are involved in helping their clients select particular data, nor do they appear to be
19 involved in any subsequent communications. Thus, Data Trust and i360 do not appear to be

⁵⁹ Compl. at 11-13.

⁶⁰ “Commercial vendor” means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. 11 C.F.R. § 116.1(c).

⁶¹ *Id.* § 109.21(d)(4)(i)-(iii).

1 commercial vendors that are being employed to “create, produce, or distribute” a communication
2 for their clients under the first requirement of the “common vendor” standard.⁶² Because all
3 three factors must be satisfied in order to meet the definition of a “common vendor,” it is
4 unnecessary to analyze the second and third factors.

5 Because the conduct standard does not appear to be satisfied under these facts, there is no
6 basis in the record to conclude that the independent expenditures made by AFP, American
7 Crossroads, and Crossroads GPS and referred to by the Complaint were coordinated
8 communications. Accordingly, the Commission finds no reason to believe that AFP, American
9 Crossroads, Crossroads GPS, the RNC, the State Party Committee Respondents, and the
10 Candidate and Authorized Committee Respondents violated 52 U.S.C. §§ 30116 or 30118 by
11 making or receiving in-kind contributions in the form of coordinated communications.⁶³

12 **B. Data Trust and the RNC Did Not Make or Receive Prohibited Corporate**
13 **Contributions**

14 Under the Act, the term “contribution” includes “any gift, subscription, loan, advance, or
15 deposit of money or anything of value made by any person for the purpose of influencing any
16 election for Federal office.”⁶⁴ The provision of any goods or services without charge or at a

⁶² 11 C.F.R. § 109.21(d)(4)(i); *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421,436 (Jan. 3, 2003) (“Thus, this standard only applies to a vendor whose usual and normal business includes the creation, production, or distribution of communications, and does not apply to the activities of persons who do not create, produce, or distribute communications as a commercial venture.”); *see* MUR 6077 (Norm Coleman) (no coordination where vendor did not participate in creating, producing or distributing ads); MUR 6038 (Doug Lamborn, *et al.*) (allegations of coordination arising out of groups sharing voter lists through a vendor dismissed as a matter of prosecutorial discretion).

⁶³ Although the Commission has stated that non-communication expenditures, when coordinated, are in-kind contributions to the candidate or party committee with whom they are coordinated, *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 426 (Jan. 3, 2003), there does not appear to be such an expenditure in this case. There is no available information suggesting that the things of value traded among the respondents (money, products, and services) were not given in exchange for equal value as part of commercial transactions.

⁶⁴ 52 U.S.C. § 30101(8)(A)(i).

1 charge that is less than the usual and normal charge for such goods or services is a contribution.⁶⁵

2 The Act prohibits corporations from making contributions to any political party or

3 organization.⁶⁶ Correspondingly, no person may knowingly accept a prohibited contribution.⁶⁷

4 According to Data Trust, the Data Exchange Agreement between the RNC and Data
5 Trust is an arm's-length, commercial arrangement with mechanisms in place to ensure that the
6 data exchanged by both parties is of equal value.⁶⁸ The available information does not refute or
7 otherwise provide any basis to discredit that assertion.⁶⁹ Therefore, the Data Exchange
8 Agreement does not appear to have resulted in a contribution to the RNC from Data Trust.⁷⁰

9 The Complaint also alleges that Data Trust provided data management services to the
10 RNC that were worth more than a single alleged \$25,000 payment made by the RNC to Data
11 Trust. The Complaint appears to be incorrect in its assumption, however – Data Trust and the
12 RNC each state in their responses that the RNC manages its own data, and further, that for all
13 services provided to the RNC,⁷¹ Data Trust receives “monetary compensation at fair market

⁶⁵ 11 C.F.R. § 100.52(d)(1).

⁶⁶ 52 U.S.C. § 30118(a).

⁶⁷ *Id.*

⁶⁸ *See supra* at 7; Data Trust Resp. at 2

⁶⁹ *See* Statement of Reasons of Comm'rs. Mason, Sandstrom, Smith, and Thomas at 2, MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc.) (“[W]hile credibility will not be weighed in favor of the complainant or the respondent, a complaint may be dismissed if it consists of factual allegations that are refuted with sufficiently compelling evidence provided in the response to the complaint . . .”).

⁷⁰ *See* Advisory Op. 2002-14 (Libertarian National Committee) at 5 (“When such exchanges of equal value occur, which are non-reportable events under the Act, no ‘contribution, donation, or transfer of funds or any other thing of value’ takes place . . .”); Advisory Op. 1981-46 (Dellums) at 2; *see also* Advisory Op. 2014-06 (Ryan, *et al.*) at 8 (recounting Commission’s longstanding position “that a political committee’s mailing lists are assets that have value and that are frequently sold, rented, or exchanged in a market”); Advisory Op. 2014-09 (REED Marketing) at 4 n.6 (citing Advisory Op. 2014-06).

⁷¹ *See supra* at 9-10. Examples include technical support, the purchase and transition costs related to an unfinished computer program, and licenses for certain applications developed by Data Trust.

1 rates,” including several payments totaling far more than the amount alleged in the Complaint.⁷²
2 The allegations in the Complaint do not appear to be substantiated, and thus there is no basis to
3 find that Data Trust made a contribution to the RNC. Accordingly, the Commission finds no
4 reason to believe that Data Trust and the RNC violated 52 U.S.C. § 30118(a) by making or
5 receiving a prohibited contribution.

6 **C. The RNC and Data Trust Did Not Solicit, Receive, or Direct Soft Money**

7 The Complaint alleges that the RNC “illegally established, financed, maintained, and/or
8 controlled” the Data Trust.⁷³ Under the Act, as amended by the Bipartisan Campaign Reform
9 Act of 2002 (“BCRA”), national political parties and entities directly or indirectly established,
10 financed, maintained or controlled by, or acting on behalf of, a national political party, may not
11 solicit, receive, or direct to another person a contribution,⁷⁴ donation,⁷⁵ or transfer of funds, or
12 any other thing of value, that is not subject to the prohibitions, limitations, and reporting
13 requirements of the Act.⁷⁶ The ten non-exclusive factors set out at 11 C.F.R. § 300.2(c)(2)
14 determine whether a person or entity (“sponsor”) “directly or indirectly established, financed,
15 maintained or controlled” another person or entity under 52 U.S.C. § 30125. These factors must
16 be examined in the context of the overall relationship between the sponsor and the entity to

⁷² Data Trust Resp. at 9.

⁷³ Compl. at 17-18.

⁷⁴ “Contribution” includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i).

⁷⁵ “Donation” means “a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions.” 11 C.F.R. § 300.2(e).

⁷⁶ See 52 U.S.C. § 30125; see 11 C.F.R. §§ 300.10(a)(1), (c)(2).

1 determine whether the presence of any factor or factors is evidence that the sponsor "directly or
2 indirectly established, financed, maintained or controlled" the entity.⁷⁷

3 In this case there does not appear to be a violation of the Act. Even assuming that the
4 RNC established Data Trust, there is only a violation of section 30125 if the RNC or Data Trust
5 accepted contributions, donations, or transfers of funds, or any other thing of value that is not
6 subject to the Act's source and amount limitations.⁷⁸ The available information, however,
7 appears to show that Data Trust is operating a commercial enterprise, and that any funds (or
8 things of value, like data enhancements) it receives are given in exchange for the products and
9 services (or data enhancements) it provides to its clients or partners.⁷⁹ Accordingly, the
10 Commission finds no reason to believe that Data Trust and the RNC violated 52 U.S.C. § 30125
11 by soliciting, receiving, or directing contributions, donations, transfers of funds, or any other
12 thing of value, that is not subject to the prohibitions, limitations, and reporting requirements of
13 the Act.

⁷⁷ 11 C.F.R. § 300.2(c)(2).

⁷⁸ 52 U.S.C. § 30125; *see* 11 C.F.R. § 300.10(a)(1).

⁷⁹ *See* Advisory Op. 2002-14 (Libertarian National Committee) at 4-5 (list rental payments to a party committee were not a "contribution, donation, or transfer of any funds or any other thing of value . . . subject to the limitations [and] prohibitions . . . of [the] Act" when the list had an ascertainable market value, was leased at a usual and normal charge in a bona fide, arm's-length transaction, and was used in a commercially reasonable manner consistent with such an arm's-length agreement).